

DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-213663

DATE: June 22, 1984

MATTER OF: Canberra Industries, Inc.

DIGEST:

1. Where protester initially corresponds with agency requesting information under Freedom of Information Act (FOIA) "in an effort to avert a formal protest" and subsequently files a formal protest, the latter date is used to apply the timeliness requirements of GAO Bid Protest Procedures.
2. Belief by protester that it requires additional information under FOIA to file protest which GAO finds unnecessary will not toll timeliness requirements.
3. FOIA provides no authority for GAO to determine when or what information must be disclosed by government agencies.

Canberra Industries, Inc. (Canberra), protests the award of a contract to Nuclear Data, Inc. (Nuclear Data), by Naval Supply Center (NSC) of Charleston, South Carolina, under request for proposals (RFP) No. N00612-83-R-0218 to obtain a multichannel analyzer system (MCA).

We dismiss the protest as untimely.

NSC solicited for the lease to purchase a Nuclear Data 6700 MCA on a brand name or equal basis. The Nuclear Data proposal was determined to be acceptable. The Canberra proposal was found to have four deficiencies. Canberra was informed of these deficiencies, and the solicitation was reopened for best and final offers. Canberra corrected one deficiency. The solicitation was amended to provide for purchase of the system, as lease to purchase was more expensive. Nuclear Data was the low offeror in response to best and final offers and was awarded the contract on September 14, 1983.

On September 26, 1983, Canberra wrote to NSC asserting Nuclear Data's inability to interface with other Canberra equipment as required by the solicitation and, pursuant to the Freedom of Information Act (FOIA), requested copies of

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the responses to the RFP "in an effort to avert a formal protest." An information copy was sent to this Office on September 29, 1983, and we acknowledged receipt. NSC's protest report noted that Canberra's request did not refer to a solicitation or contract number. By telephone, Canberra clarified the request, asking for an abstract of the proposals. NSC forwarded the information to Canberra on September 30, 1983.

Canberra wrote to the Director of Contracts and Purchasing Division of NSC on October 4, 1983. Canberra thanked the Director for responding to its request for information and stated its contention that Nuclear Data equipment could not interface. Canberra asserted that if the agency did not investigate Nuclear Data's compliance with the specifications, it "will protest the award." NSC's protest report reveals that this letter was filed with the contract administrator.

No further communication from Canberra was received until Canberra's November 4, 1983, letter of protest to GAO, wherein it noted its prior assertion concerning its competitor's "ability to perform." Canberra requested our Office to find under the FOIA that it was entitled to the information requested and that the contract was "improperly awarded to Nuclear Data."

Under our Bid Protest Procedures, a protest must be filed no later than 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1983). Further, a protest will be considered timely if it is based entirely upon materials received pursuant to an FOIA request and filed within 10 days of the receipt of these materials. Pacificon Productions, Inc., B-196371, July 22, 1980, 80-2 CPD 58. At the latest, Canberra knew or should have known the basis for its protest on October 4, 1983. Our Office received Canberra's protest 24 days later on November 8, 1983. All relevant prior communication from Canberra to NSC merely indicated the possibility of a protest.

Although Canberra requested more specific information regarding Nuclear Data's exact response to certain solicited items (which we presume to be a continuation of the prior FOIA request, though Canberra did not refer to FOIA in the subsequent request), this information merely would expand and clarify what Canberra already knew and expressed in its October 4, 1983, letter. Moreover, the solicitation specifically designated the Nuclear Data system as the brand

name. In this regard, where a protester is on notice of the grounds for protest, its belief that it requires additional information under the FOIA will not toll the timeliness requirements. Drinkwater Engineering, Inc., B-209386, March 14, 1983, 83-1 CPD 248.

In addition, Canberra's request for a ruling that it is entitled to information requested under the FOIA is beyond the purview of our Office. The FOIA provides no authority for our Office to determine when or what information must be disclosed by government agencies. The protester's recourse is to pursue its disclosure remedies under the procedures provided by the FOIA. Ikard Manufacturing Company, B-211041, March 23, 1983, 83-1 CPD 302.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel